

Docket:	A.20-04-023
Exhibit Number:	WTF-1
Commissioner:	Marybel Batjer
ALJ:	Robert Haga
Witness:	Aaron L. Rothschild

**DIRECT TESTIMONY OF AARON L. ROTHSCHILD
ON BEHALF OF WILD TREE FOUNDATION**

**Application of Pacific Gas and Electric Company for Authority to Securitize Certain Costs
and Expenses Pursuant to Public Utilities Code Section 850 et seq.**

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1 **I. STATEMENT OF QUALIFICATIONS**

2 **Q. Please state your name and business address.**

3 **A. My name is Aaron L. Rothschild. My business address is 15 Lake Road, Ridgefield, CT.**

4 **Q. By whom are you employed and what is your position?**

5 **A. I am President of Rothschild Financial Consulting**

6 **Q. Please describe your duties and responsibilities.**

7 **A. I am responsible for preparing expert witness testimony, capital market research, business**
8 **development, and building consulting teams.**

9 **Q. Please describe your educational background and professional experience.**

10 **A. I have a B.A. (1994) degree from Clark University in mathematics and an M.B.A. (1996)**
11 **from Vanderbilt University. I provided financial analysis in the telecom industry in the**
12 **United States and Asia Pacific from 1996 to 2001, investment banking in New York,**
13 **complex systems science research regarding the power sector at an independent research**
14 **institute, and I have prepared financial testimonies in utility rate case proceedings since**
15 **2002. See Appendix A for my resume and Appendix B for my testifying experience.**

16 **II. PURPOSE OF TESTIMONY**

17 **Q. What is the purpose of your testimony?**

18 **A. In Application 20-04-023 Pacific Gas & Electric Company (PG&E) seeks to apply the**
19 **Stress Test Method adopted in Decision (D.) 19-06-027 pursuant to Pub. Util. Code Section**
20 **451.2(b); and determine that pursuant to the Stress Test Methodology \$7.5 billion of 2017**

1 catastrophic wildfire costs and expenses may be financed through the issuance of recovery
2 bonds pursuant to Public Utilities Code Sections 850 et seq.

3 The focus of my testimony is to determine: a.) Whether the proposed Securitization
4 is to the benefit of consumers, rate-neutral and customer-protective as claimed by PG&E,
5 including with respect to the proposed Customer Credit Trust (Trust) and b.) Whether any
6 Recovery Bonds issued under the terms of PG&E's proposal “would reduce, *to the*
7 *maximum extent possible*, the rates on a present value basis that consumers within the
8 electric corporation's service territory would pay as compared to the use of traditional
9 utility financing mechanisms”¹

10 My testimony demonstrates that PG&E’s proposal violates the terms of PG&E’s
11 bankruptcy plan that requires PG&E to cover 100% of the approximately \$7.5 billion in
12 wildfire liabilities and that requires ratepayer neutrality as a prerequisite for PG&E
13 participation in the AB 1054 wildfire insurance fund. As explained below, PG&E’s
14 proposal puts ratepayers at risk of paying a significant portion of those liabilities.
15 Additionally, PG&E’s securitization does not fulfill the requirements of AB 1054 because
16 it is not rate neutral on average. Regarding PG&E’s anticipated securitization to pay
17 approximately \$7.5 billion in wildfire liabilities, the Commission stated in Decision 20-05-
18 053 that it “finds that the potential for ratepayers to bear the cost of those claims without
19 nominal cost offsets provided by utility shareholders has been removed from PG&E’s
20 reorganization plan.”² PG&E agreed that “The Securitization structure is anticipated to

¹ Pub. Util. Code, § 850.1, subd. (a)(1)(A)(iii). The statute contains two other requirements – that the terms of the Recovery Bonds be “just and reasonable” and “consistent with the public interest” -- that the applicant must also meet.

² D.20-05-053 at p. 81.

1 yield a full (nominal) offset each year to securitized charges.”³ AB 1054 - which was
2 enacted after SB 901 – expressly requires PG&E to resolve all prepetition wildfire claims
3 in a manner that is “neutral, on average, to ratepayers”⁴ to be eligible for participation in
4 the wildfire insurance fund.

5 PG&E’s proposed securitization is not in the best interest of consumers and should
6 be rejected because the cost of the securitization to consumers outweighs the benefits.
7 PG&E claims that consumers would benefit by \$441 million because of the securitization.
8 As explained below, even accepting PG&E’s calculations are accurate, this claimed \$441
9 million benefit to consumers is inadequate because consumers face considerable risk of
10 paying more than \$441 million under PG&E’s proposed securitization. These risks put on
11 consumers include stock market performance over the next 30 years and PG&E’s capacity
12 to contribute shareholder tax deductions or Net Operating Loss (NOL) carry forwards. If
13 the Commission chooses to approve PG&E’s application to issue these \$7.5 billion in
14 securitized bonds, I recommend several significant modifications to PG&E’s proposal as
15 discussed below.

16 Additionally, my testimony demonstrates that the Commission would not have
17 sufficient, accurate and non-biased information to determine whether PG&E’s application
18 would meet all legislative requirements if the Commission gives up all future regulatory
19 review of PG&E following a decision in this proceeding to issue a financing order, as
20 proposed by PG&E. Based upon a review of Commission precedent and best practices in

³ *Id.* at p. 82.

⁴ Pub. Util. Code, § 3291, subd. (b)(1)(D) (“[T]o participate in the fund established pursuant to subdivision (a), an electrical corporation must meet the following conditions. . . The commission has determined that the reorganization plan and other documents resolving the insolvency proceeding are . . . (ii) neutral, on average, to the ratepayers of the electrical corporation.

1 the structuring, marketing and pricing of utility securitization bonds and established
2 precedents around the country, I recommend a pre-bond issuance review process whereby
3 the financing order is written so that the Commission can retain jurisdiction over these
4 aspects of the bond to ensure that bond costs are minimized, and other legislative
5 requirements are met before the bonds are sold.

6
7 **Q. Please summarize your recommendations.**

8 **A.** I recommended PG&E's proposed securitization be rejected by the Commission because
9 it does not meet the requirements established in AB 1054 and in Decision 20-05-053 that
10 it be ratepayer neutral and that ratepayers not pay for the costs of the 2017 fires that PG&E
11 caused. PG&E's shareholder should thereby be required to pay for the full \$7.5 billion in
12 wildfire liabilities. Should the Commission nonetheless decide to approve PG&E's
13 securitization application, I recommend the following modifications:

- 14 1. The Commission will further analyze PG&E's claims regarding its
15 proposed path to investment grade credit rating and to determine the other
16 material terms and the optimal structure of the proposed Customer Credit
17 Trust. This should include review of PG&E's proposal to establish the Trust
18 as a Grantor Trust. Following further review by a financing team composed
19 of the Commission, Commission staff and independent financial advisors,
20 the Commission will approve securitization only if the Commission has a.)
21 made a determination that PG&E has demonstrated a path to investment
22 grade credit rating, and b.) PG&E agrees to implement the Customer Credit
23 Trust as designed by the Commission;

- 1 2. Ratepayers be guaranteed 100% of any surplus that exists in the shareholder
2 assets of the Trust;
- 3 3. The Commission – not PG&E management or its board of Directors - will
4 select and approve the members of the Customer Credit Trust management
5 committee. The members will owe ratepayers a fiduciary duty and will
6 make decisions on a majority basis;
- 7 4. Trust management should be required to notify the Commission in the
8 event of a deficit or shortfall. Once notified, the Commission will conduct
9 an independent review at that time to determine whether and how much
10 PG&E shareholders should be required to contribute to the Trust so as to
11 meet the requirements of ratepayer neutrality and to ensure that ratepayers
12 not pay for the costs of the 2017 fires;
- 13 5. Managers of the Trust would have the authority to distribute any
14 accumulated surplus to ratepayers at their professional discretion anytime;
- 15 6. The Commission will retain oversight of the bond following the issuance of
16 a financing order and will utilize a pre-issuance financing team process to
17 determine the structure, marketing and pricing of the bond so as to meet the
18 requirements of Pub. Util. Code sections 850 et seq.

1 **III. IMPACT OF PROPOSED SECURITIZATION ON RATEPAYERS**

2 **Q. PG&E claims their proposed securitization is in the best interests of ratepayers. Do**
3 **you agree?**

4 **A.** The proposed securitization is not in the best interest of ratepayers. I disagree with PG&E’s
5 assertion that its Securitization proposal is rate neutral, customer protective, offers
6 substantial benefit to ratepayers, meets the requirements of 850.1(a)(1)(A), and “would
7 strengthen PG&E’s credit metrics and expedite its path back to an investment-grade issuer
8 credit rating to the benefit of all stakeholders, including customers, through reduced
9 borrowing costs.”⁵

10 PG&E’s securitization proposal substantially departs from traditional securitization
11 financing and significantly increases financial risk to ratepayers. PG&E’s proposal would
12 force ratepayers to make an investment into a “Trust” in which ratepayers would carry all
13 the risk of loss but would benefit from only a small slice of potential, but not guaranteed,
14 profits. Normally, with traditional securitized financing, there is 100% assurance that
15 ratepayers would pay for the obligation being financed. For example, utility securitized
16 bonds have been used to finance stranded costs associated with deregulating generation
17 stations. These stranded generating assets were determined to be recoverable from
18 ratepayers whether or not they were securitized. In this case, however, PG&E’s
19 Reorganization plan specifically protects ratepayers from being responsible to pay for the
20 obligations proposed to be financed (PG&E’s wildfire liabilities). Nonetheless, in PG&E’s
21 own words, “the consumer would bear some risk that the Trust could experience a shortfall

⁵ A.20-04-023, PG&E Prepared Testimony (Updated) at p. 1-2.

1 in some period(s) or become exhausted prior to the repayment of the recovery bonds or
2 associated financial costs.”⁶ At the same time, PG&E has proposed to establish a Customer
3 Credit Trust funded by “Shareholder Contributions” and “Customer Credit Trust Returns”
4 that would “share” with ratepayers receiving only 25% of any “surplus” in the Customer
5 Credit Trust, “to be distributed at the end of the life of the Trust.”⁷ The benefits claimed
6 by PG&E, which include accelerating a return to investment grade credit rating and
7 lowering PG&E’s future cost of debt, are speculative. The overall cost to ratepayers
8 significantly outweighs any such speculative benefits.

9 **Q. Specifically, how does PG&E’s proposal for a Trust impose financial risk on**
10 **ratepayers?**

11 **A.** PG&E states that it has calculated that there is an 84% chance the Trust will have a surplus.⁸
12 Such forecasting relies upon assumptions of financial conditions over the next 30 years
13 including the performance of the stock market. Setting aside whether or not PG&E’s
14 prediction is based upon a sound methodology, PG&E’s plan is still premised upon
15 ratepayers carrying a risk – be it PG&E’s predicted 16% chance or a much greater
16 likelihood of a Trust deficit. PG&E’s plan to address this risk provides no guarantees and
17 does not, therefore, eliminate the risk to ratepayers. On this matter, PG&E states that other
18 than the Initial Shareholder Contribution, Additional Shareholder Contribution, and
19 Customer Credit Trust Returns, “PG&E will not be obligated to make any contributions to
20 the Customer Credit Trust.”⁹ The customer credit returns are dependent upon successful

⁶ A.20-04-023, Application at p. 10.

⁷ A.20-04-023, Application at p. 4.

⁸ A.20-04-023, PG&E Prepared Testimony at p. 6-29.

⁹ A.20-04-023, PG&E Prepared Testimony at Exhibit 3.1: Form of Financing Order at p. 5.

1 investment of a portfolio of risk assets consisting of stocks and bonds, which is never
2 certain. The “Additional Shareholder Contributions” are capped, unguaranteed, not
3 planned to commence until 2024 and dependent on future performance and various
4 corporate metrics that are presently uncertain.

5 **Q. Does PG&E’s proposal to “share” 25% of any surplus with ratepayers offset the risk**
6 **of loss?**

7 **A.** PG&E has not made any proposal to offset the risk to ratepayers and its proposal does not
8 otherwise include any features that would make the plan ratepayer neutral. Under PG&E’s
9 proposal, its shareholders would receive 75% of any upside for the Trust yet would bear
10 no risk on the downside, while ratepayers must fund any shortfall in full at their own
11 expense. Should the Trust produce a loss, ratepayers will be on the hook 100% even in
12 the event that PG&E is able to make the payments. On the other hand, in the case of a
13 surplus in the Trust, ratepayers would receive only 25% with PG&E retaining the
14 remaining profit.

15 As stated in a PG&E data request response, the 25% share is derived as follows:
16 “The expected value of negative outcomes...is approximately 10% of the expected value
17 of the Trust surplus. PG&E determined to provide 2.5 times that amount as the sharing
18 (25%).”¹⁰ This determination is an arbitrary methodology developed by PG&E to allow
19 its shareholders to profit from the financing of liabilities resulting from its negligence that
20 caused extensive damage and loss of life. Moreover, shareholders would profit at three
21 times the amount that would be “shared” by ratepayers. In my view, if securitization is

¹⁰ A.20-04-023, PG&E response to TURN Data Request No. A4NR_001-Q2.

1 approved despite the lack of ratepayer neutrality, at the very least, given the proposed
2 structure, ratepayers should be entitled to 100% of any surplus in the Trust.

3 Under PG&E's proposed structure, should PG&E need or decide to file for
4 bankruptcy in the future, contributions to the Trust could conceivably stop completely and
5 permanently. Ratepayers would be unprotected and forced to cover any Trust deficit, even
6 though the bankruptcy reorganization decision stipulates that PG&E cannot recover, and
7 ratepayers cannot be charged for wildfire related debt.

8 **Q. What is your assessment of PG&E's plan to manage the Trust?**

9 **A.** PG&E has not proposed a reasonable plan for Trust management. An arrangement where
10 investors in a fund/portfolio bear 100% of losses but receive only 25% of gains can create
11 conflicts and/or distorted incentives for the Trust managers, whether intended or not. For
12 example, if Trust managers are biased toward PG&E, there is a risk they will structure the
13 Trust's investment portfolio in a manner that may not be in the best interest of ratepayers.
14 Yet, PG&E proposes that its own management and board of directors will select the Trust
15 management committee members with only three of five members nominations subject to
16 Commission confirmation.

17 PG&E's plan also does not allow for sufficient management control regarding if
18 and when available surplus funds would be distributed to ratepayers. As proposed,
19 ratepayers would not receive any upside from the Trust until the end of the life of the Trust,
20 30 years down the road. The managers of the Trust should have the authority to distribute
21 a Trust surplus earlier than the end of the life of the Trust.

22 Ratepayers would be better served if all managers of the Trust had primary
23 fiduciary responsibility to ratepayers, not to PG&E and all members of the management

1 committee were confirmed by the Commission only, not by PG&E management or by its
2 Board of Directors. The Commission should have authority to terminate managers and to
3 approve all compensation, management fees, etc. Actions taken by the management
4 committee, including any amendments to fundamental provisions, should be approved by
5 a majority, not a super-majority of members as proposed by PG&E.

6 **Q. PG&E proposes to establish the Customer Credit Trust in the form of “grantor trust”**
7 **under a trust agreement. Do you have any concerns with this?**

8 **A.** Yes, I am concerned that a grantor trust agreement may put too much control in the hands
9 of PG&E. The Internal Revenue Service explains the issues with a grantor trust: “ ‘Grantor
10 trust’ is a term used in the Internal Revenue Code to describe any trust over which the
11 grantor or other owner retains the power to control or direct the trust's income or assets. If
12 a grantor retains certain powers over or benefits in a trust, the income of the trust will be
13 taxed to the grantor, rather than to the trust. (Examples, the power to decide who receives
14 income, the power to vote or to direct the vote of the stock held by the trust or to control
15 the investment of the trust funds, the power to revoke the trust, etc.)”¹¹

16 Under PG&E’s proposal it would be the grantor that would select the Trust
17 managers; PG&E has not demonstrated that such a structure would be in the best interest
18 of ratepayers. The Trust must be structured so as to protect ratepayers interests and the
19 assets of the Trust in the normal course of business as well in the event of bankruptcy and
20 dissolution or transfer of ownership.

¹¹ Internal Revenue Service, *Abusive Trust Tax Evasion Schemes - Questions and Answers*,
<https://www.irs.gov/businesses/small-businesses-self-employed/abusive-trust-tax-evasion-schemes-questions-and-answers>.

1 **Q. Is there a potentially better alternative for ratepayers than this proposed Securitized**
2 **debt offering?**

3 **A.** Yes. PG&E could instead issue equity. Upon issuing roughly the same \$7.5 billion of
4 common stock, PG&E could use the proceeds to pay off debt and thereby achieve
5 approximately the same improvement in its credit standing as may result from the proposed
6 securitization offering but without putting ratepayers at added risk. It is not a foregone
7 conclusion that ratepayers will be stuck paying for PG&E's high cost of debt. To the extent
8 PG&E's debt cost remains high as a result of its wildfire liabilities, it would be consistent
9 with the terms of the bankruptcy decision that ratepayers not be charged for the excess
10 interest cost. Interest cost escalation caused by PG&E's negligence that caused wildfire
11 losses should not be charged to ratepayers, whether or not PG&E finds a way to reduce its
12 interest costs.

13 While lower financing costs associated with securitization is understandably
14 alluring, it is advisable to be selective. While in theory there is no or minimal cost of equity
15 associated with securitization financing, in reality it is the ratepayers who step in to
16 function like equity holders. This happens because with securitization, ratepayers have to
17 pay for the bonds whether or not they receive any service from the associated assets. In
18 fact, they have to pay even if they receive no utility service at all. Suppose, for example
19 the proposed securitization is executed and PG&E files for bankruptcy a few years from
20 now and subsequently goes out of business. If a new entity takes over the franchise,
21 ratepayers would still have to pay for the debt that PG&E securitized, in addition to
22 whatever pre-existing charges the new utility company carries with it. In this example,
23 had the securitization not occurred, ratepayers would only have to pay the charges from the

1 new utility provider. I recommend that the Commission consider equity financing in lieu
2 of PG&E's securitization proposal.

3 **Q. If the Commission does not outright dismiss PG&E's application, how might the**
4 **Commission be able to better protect ratepayers?**

5 **A.** First, in my view, PG&E's proposal to issue a securitized bond, also known as a ratepayer
6 backed bond, cannot simultaneously meet the requirements of ratepayer neutrality and
7 support its path to an investment-grade issuer credit rating; ratepayer neutrality and the
8 ratepayer backed bond structure are mutually exclusive. To be a ratepayer-backed bond,
9 ratepayers must back the bond. That is, ratepayers must assume the risk of loss. PG&E
10 itself relies upon this inherent conflict as justification for why its plan can't truly be
11 ratepayer neutral: "The structure of the Customer Credit cannot require a guarantee from
12 PG&E. In the event that PG&E were to guarantee the Customer Credit mechanism, S&P
13 would likely treat it as an enforceable contractual commitment and, therefore, the
14 Securitization would be on-credit and the forecasted improvement in financial metrics
15 would not occur. This would preclude accelerating PG&E's path back to an investment-
16 grade issuer credit rating."¹² The Commission should therefore deny PG&E's proposal
17 because, by design, it is not ratepayer neutral and because it seeks to impose costs for the
18 2017 wildfires on ratepayers, many of whom are themselves victims of the PG&E-ignited
19 fires. But, if the Commission nonetheless undertakes further inquiry into PG&E's
20 proposal, it is incumbent upon the Commission to thoroughly vet PG&E's claims regarding
21 a path to investment grade credit rating, the optimal structure of the Trust, and material
22 terms of the bond itself. Following the approach utilized in D.20-03-008 and D.04-11-015,

¹² A.20-04-023, PG&E Prepared Testimony (Updated) at p. 1-4.

1 the Commission can form a financing team comprised of the Commissioners, Commission
2 staff, and independent financial advisors to evaluate PG&E's claims and make a
3 determination of whether PG&E can demonstrate a path back to investment grade credit
4 rating through a ratepayer backed bond. Should the Commission determine that this is
5 possible, as required by its own precedent, it could then utilize a financing team to
6 determine the optimal structure for the Trust that would be most protective of ratepayers.
7 As described in more detail below, if the Commission ultimately issues a financing order,
8 it should be done so only with pre-bond issuance financing team review process. I do not
9 recommend the above-described use of a financing team to supplement a public process
10 whereby there is meaningful participation by intervenors and opportunities for objection
11 but instead propose this as method to develop a more robust record upon which the
12 Commission can make more informed decisions as part of this proceeding.

13 Finally, should the Commission ultimately approve a bond, its decision can include
14 a provision for future review of PG&E's ability to pay into the Trust should the Trust have
15 a deficit or is at risk of having a deficit.

16 **Q. Who should determine if the fund has a deficit or is in danger of having a deficit and**
17 **what criteria would be used to make such a determination?**

18 **A.** The managers of the Trust, who should hold a fiduciary duty to ratepayers, should
19 determine if the Trust had a deficit or is at risk of having a deficit based upon Commission-
20 defined criteria for determining if and when the Trust has a deficit and/or has a shortfall.

1 **Q. What factors or criteria should be considered by the Commission to determine if**
2 **PG&E can and should contribute to the Trust in the event that there is a deficit or**
3 **shortfall in the Trust?**

4 **A.** In the event that the Customer Credit Trust results in a deficit or shortfall, I recommend
5 that the Commission conduct a review -- in effect a feasibility study -- at that time to
6 determine whether PG&E can and should reasonably contribute sufficient funds to the
7 Trust to compensate for the Trust shortfall without jeopardizing its investment grade
8 status. I recommend that the Commission review financial ratios/metrics commonly
9 utilized by Moody's and S&P such as that described in PG&E's Exhibit 5.3 that
10 include: Debt / EBITDA; Debt / Total Capitalization; FFO (Funds from Operations) / Debt;
11 CFO Pre-WC (Cash Flow from Operations Before Working Capital / Debt; CFO Pre-WC
12 + Interest / Interest; CFO Pre-WC – Dividends / Debt.

13 **IV. STRUCTING, MARKETING, AND PRICING OF SECURITIZED BOND**

14 **Q. How are Recovery Bonds different from traditional utility debt instruments?**

15 **A.** Securitization is the process of issuing highly-rated securities through special purpose,
16 bankruptcy-remote or ring-fenced entities, a Special Purpose Entity ("SPE"). In a
17 securitization of costs by an investor owned utility ("IOU"), as in this case, pursuant to
18 the enabling legislation, a utility regulatory commission issues an irrevocable Financing
19 Order and authorizes a specific dedicated rate component to be imposed on all sales of
20 electricity within a given utility's service territory to support the payment of principal and
21 interest on securitized bonds sold to private investors. That dedicated rate component is
22 periodically adjusted, up or down, through a true-up mechanism to whatever level is

1 necessary to create a stable cash flow to pay off the bonds. Combined, these factors
2 should enable these securitized bonds to receive the highest credit rating score from the
3 nationally recognized bond rating agencies and therefore the potential of getting the
4 lowest interest rate available.

5 Since 1997, all utility securitization debt has been rated AAA by major credit rating
6 agency except for one transaction.¹³ However, it is important to remember that a high
7 rating does not ensure the lowest interest rates and therefore the lowest customer charges
8 possible at the time of pricing. There are no “standard” rates in the market for different
9 credit ratings. If there were standard rates there would be no need for underwriters or a
10 “negotiated” transaction.

11 A securitization, while lower in cost than traditional utility financing mechanisms,
12 will not necessarily produce the *lowest* costs to the consumer when the bonds are priced or
13 the maximum present value savings. Substantial amounts of consumer dollars will be “left
14 on the table” in interest costs, fees and more without proactive oversight by someone with
15 a direct duty to the real obligor in this transaction, the consumer.

16 **Q. Does PG&E have an interest in striking the best deal for consumers in this case?**

17 **A.** In the case of a conventional financing, a utility has an incentive to issue bonds at the lowest
18 possible interest rate because a lower cost of debt reduces the utility’s financial risk and,
19 other things being equal, can result in lower interest rates, higher earnings and ultimately
20 the possibility of a higher stock price.

21 But in a Recovery Bond securitization like that at issue, the utility's ordinary
22 incentives are not present because the entire risk falls on the consumer and the state. The

¹³ Entergy New Orleans securitization bonds received an Aa1 rating from Moody’s.

1 interest paid on securitization bonds would be collected directly from ratepayers by PG&E
2 for the SPE. In the case of under collection, the securitization bond holders can require
3 ratepayers to make up the shortfall through the true-up mechanism; the utility company's
4 earnings, dividends and therefore its stock price will not be affected. Because the utility
5 has no financial risk for the Recovery Bonds, the utility does not have the incentive to strike
6 the best deal in the marketplace in negotiations with underwriters and investors. PG&E's
7 principal financial objective in this transaction is to get the money from the bonds as
8 quickly as possible.

9 Ensuring that the bond is structured correctly, at the outset, is therefore, critical.
10 Once the bonds are sold the Commission gives up all further review of the Recovery Bonds
11 charge and cannot alter PG&E's other rates for any reasons related to the financing order.

12 **Q. How did you determine what could be considered best practices for utility Recovery**
13 **Bonds securitizations?**

14 **A.** I have reviewed materials from all state commission proceedings that involved similar
15 utility applications for orders authorizing the use of ratepayer-backed bonds similar to
16 Recovery Bonds from 1997 to present.¹⁴ I reviewed the legislation authorizing
17 securitizations and the standards embodied in them; the language of and approval process
18 for financing orders for securitization transactions in California and other states for
19 investor-owned electric utilities; and legal and economic analyses of pricing and other
20 items affecting customers in those utility service territories.

¹⁴ See Attachment A, Chart of all investor owned-utility securitization financing orders from 2005 to present.

1 In reviewing financing orders from other states, I looked for terms and conditions
2 that gave the greatest protections to ratepayers throughout the process. I looked for key
3 terms and conditions in the irrevocable Financing Orders, and for practices in the
4 structuring, marketing, and pricing of the securities.

5 I also did a general review of the terms and conditions of the various transactions'
6 implementation agreements -- servicing agreements, administration agreements,
7 amendment provisions and other arrangements or contracts that could affect ratepayer costs
8 or liabilities available as exhibits on the SEC website for public registered transactions.

9 I also reviewed "Issuance Advice Letters" (IALs) submitted by the utility to their
10 regulator after the recovery bond transaction. These IALs listed costs and often described
11 actions taken by the utility and the commission, the commission's advisor, if any, and any
12 certifications presented to the Commission upon which they could evaluate and make a
13 "yes/no" decision as proposed by SCE in this transaction. I reviewed the dockets of
14 proceedings before this Commission including public testimony submitted by experts on
15 the topic of securitization before this Commission. Finally, I looked at the credit spreads
16 (difference between the interest rates and a corresponding benchmark security for a similar
17 maturity). To take into account differing market conditions (overall level of benchmark
18 interest rates), I also looked at these credit spreads versus an index published by Bloomberg
19 of securities credit spreads.¹⁵

¹⁵ Bloomberg website, available at: <https://www.bloomberg.com/markets/rates-bonds/government-bonds/us> .

1 **Q. What did you find?**

2 **A.** Public utility securitizations are relatively infrequent; there have been only 16 such
3 transactions nationwide over the past 10 years. The Commission has not issued a
4 financing order in about 16 years.¹⁶ However, of the 16 transactions in the past 10 years,
5 the vast majority - 14 transactions or 87.5% - have had active commission oversight,
6 utilizing a financing team supported by independent financial advisors, with a pre-
7 issuance review process for approving final upfront and most importantly to ratepayers
8 ongoing costs primarily the interest rates and credit spreads on the bonds.¹⁷

9 **Q. What best practices did you identify that are applicable to the PG&E financing**
10 **order?**

11 **A.** The key best practices are exemplified by financing orders issued by the Florida Public
12 Services Commission's in 2006 and 2015. The Florida Commission utilized a financing
13 team, termed a "bond team," that advised the commission on structuring the financing
14 order, participated in the negotiation process with potential underwriters, and participated
15 in the negotiation and drafting of agreements related to the securitization. Florida's
16 financing order process was developed as part of a fully contested proceeding that involved
17 review of the practices of other states at the time to evaluate and determine best practices.¹⁸

¹⁶ A.04-07-032.

¹⁷ See Attachment A, Chart of all investor owned-utility securitization financing orders from 2005 to present.

¹⁸ See Florida Public Service Commission, Petition for issuance of a storm recovery financing order, by Florida Power & Light Company, Docket no. 060038-EI, *Financing Order* (May 30, 2009), available at: www.floridapsc.com/library/filings/2006/04676-2006/04676-2006.PDF; Florida Public Service Commission, Petition for issuance of nuclear asset recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy. Docket no. 150171-EI, *Financing Order*

1 Notably, Florida had expert testimony on the market practices and examined issues in
2 Texas, New Jersey and West Virginia.¹⁹

3 The Florida commission concluded that to “achieve a lowest cost to the consumer”
4 and the “greatest customer protections” the commission should be “actively and integrally
5 involved in the bond issuance [process]” and should secure the advice of experts who are
6 independent of the underwriters and are able to evaluate proposals and structure the
7 safeguards that will “ensure that the processes are competitive.”²⁰ The “bond team”
8 concept utilized in Florida included active involvement in the bond issuance by the
9 Commission and its staff, the Commission’s independent financial advisor and outside
10 legal counsel as joint decision makers with the utility.

11 Other states have utilized similar bond or financing teams. For example, the Texas
12 Commission included a similar provision as Florida establishing a bond team in 2001,
13 2002, 2004 and 2005 financing orders as it sought to establish the Texas program in the
14 marketplace and the New Jersey Board of Public Utilities utilized a negotiating team as

(November 19, 2015), available at: www.psc.state.fl.us/library/filings/2015/07364-2015/07364-2015.pdf.

¹⁹ See Florida Public Service Commission, Petition for issuance of nuclear asset recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy. Docket no. 060038-EI and 150171-EI, available at: <http://www.psc.state.fl.us/ClerkOffice/Docket>.

²⁰ Florida Public Service Commission, Petition for issuance of nuclear asset recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy. Docket no. 150171-EI, *Financing Order* (November 19, 2015) at ¶¶ 92-93. Since 2005, the public service commissions in multiple states – Florida, New Jersey, Texas, West Virginia, Ohio, Maryland and Louisiana -- have issued securitization financing orders with similar provisions ensuring expert, independent oversight of the process.

1 part of the process to authorize securitized bonds related to stranded cost recovery by
2 Public Service Electric and Gas Co. in 2005.²¹

3 **Q. Has the Commission utilized a financing team in the past?**

4 **A.** Yes. In 2004, the Commission utilized a financing team, advised by an outside expert, in
5 the securitization of costs related to PG&E's first bankruptcy.²² The Commission
6 established the financing team in D.04-11-015 through the following language in the
7 financing order: "Prior to the issuance of each series of Energy Recovery Bonds, the Bonds
8 and the associated Bond transaction shall be reviewed and approved by the Commission's
9 Financing Team consisting of the Commission's General Counsel, the Director of the
10 Energy Division, other Commission staff, outside bond counsel, and any other outside
11 experts that the Financing Team deems necessary. The other outside expertise may include,
12 for example, an independent financial advisor to assist the Financing Team in overseeing
13 and reviewing the issuance of each series of Bonds. The Financing Team's approval of each
14 series of Bonds shall be evidenced by a letter from the Financing Team to PG&E. Any
15 costs incurred by the Financing Team in connection with its review and approval of each
16 series of Bonds shall be treated as a Bond issuance cost."²³ The financing order permitted
17 the bond issuance only following the issuance of "a certificate that states the Commission's
18 Financing Team has reviewed and approved each series of Energy Recovery Bonds in
19 accordance with this Financing Order."²⁴

²¹ See Attachment A, Chart of all investor owned-utility securitization financing orders from 2005 to present.

²² A.04-07-032.

²³ D.04-11-015 at Financing Order, ordering paragraph 33.

²⁴ D.04-11-015 at Financing Order, ordering paragraph 73.

1 D.04-11-015 was based upon a less stringent standard than that as issue here. In
2 2004, the standard for limitations on the Recovery Bonds costs was pursuant to the 2004
3 version of Public Utilities Commission section 848.1(a) that states that the Commission
4 may issue a financing order for Recovery Bonds if doing so “would reduce the rates on a
5 present value basis that consumers within the recovery corporation’s service territory
6 would pay if the financing order were not adopted.”²⁵

7 It is even more important now that the Commission follow best practices and
8 establish a financing team supported by independent experts because AB 1054 materially
9 increased requirements for protecting consumers and because this application will likely
10 serve as precedent for many future Recovery Bonds securitizations to come from all the
11 IOUs. The legislative standard applicable to this securitization and others to come is much
12 clearer and more favorable to consumers than that applied in 2004. The AB 1054 standard
13 that present value savings to customers must “reduce rates to the maximum extent
14 possible”²⁶ is the toughest standard ever applied by this or any other state utility
15 commission.

16 **Q. What are some of the best practices key elements of a financing order that can best**
17 **serve to minimize costs to ratepayers?**

18 **A.** In a complex legal arrangement such as a utility securitization, terms, conditions,
19 representations and warranties concerning all contracts need to be evaluated from an
20 arm’s-length, dispassionate perspective. The risks, costs and liabilities should be
21 independently evaluated, and policies should be independently developed.

²⁵ D.04-11-015.

²⁶ Pub. Util. Code Div. 1, Ch. 4, Art 5.6 (Senate Bill 772) bonds to refinance PG&E’s
bankruptcy-related regulatory asset; *See also* D. 04-11-015.

1 From the Commission's and ratepayers' perspective, the securitized utility bonds
2 will be issued under an irrevocable financing order that cannot be changed by the
3 Commission after the bonds have been issued. The term of the bonds could be as long as
4 30 years or longer. The financing order must then preserve the right to pre-issuance review
5 by a financing team.

6 In addition, the sponsoring utility and the special purpose entity (SPE) will enter
7 into a servicing agreement under which the sponsoring utility will bill, collect and remit
8 the securitized charge to a bond trustee for the account of the SPE. Like any other contracts
9 for services, that servicing agreement will have provisions concerning performance, care,
10 liabilities, and indemnities. Pursuant to best practices, the utility should indemnify
11 ratepayers for any negligent acts. All these could affect ratepayers during the life of the
12 securitized utility bonds. Yet, the servicing agreement is essentially between affiliated
13 parties with all the liabilities associated with the agreements falling to ratepayers under the
14 securitized charge and the true-up mechanism.

15 The financing order should not allow PG&E to receive an economic windfall as a
16 result of the time lag in assessing and collecting the charges, the SPE could have
17 collected in excess of the bonds after the bonds have been paid off. This consumer
18 protection can be achieved by crediting ratepayers after the last bonds are repaid.

19 Regulatory oversight should be preserved concerning the servicing agreement and
20 other transaction documents for the life of the securitized utility bonds. Ever-changing
21 corporate structures need scrutiny by the Commission because capital markets are likely
22 to change over the life of the bond. Other commission have retained this authority
23 consistent with similar statutes.

1 **Q. Can or should the commission rely on underwriters alone to minimize costs to**
2 **consumers as is required by statute?**

3 **A.** As established in Commission precedent and best practices from other state utility
4 commissions, the Commission should not approve a financing order that relies on
5 underwriters to determine the material terms of the bonds after the financing order is issued.
6 Underwriters have an inherent conflict of interest in determining the cost of the bonds.
7 Underwriters will want to negotiate for relatively higher interest rates so that they will be
8 able to sell the recovery bonds with the least effort, satisfying the desires of their investor
9 clients for high interest rates.

10 Underwriters are the initial purchasers of the bonds at a discount from the issuer
11 (their fee) and typically resell the bonds to investors at or close to face value. The higher
12 the interest rate, the easier it is for the underwriters to resell the bonds, earn their full fee
13 and move on to the next deal. Therefore, it is in the underwriters' economic interest to get
14 a higher cost to make the sale easier to their customers, the ultimate investors.

15 Investors also want as high an interest rate as possible. And often investors – who
16 are the main customers of the underwriter – are willing to write big checks and buy the
17 bonds with as high a yield as possible from the underwriter. They use their large orders
18 to drive the pricing to their desired levels. Underwriters are often happy to accommodate
19 this because they need those same large investors to buy other deals from them and trade
20 securities.

21 Even underwriters with a track record of integrity and transparency must be
22 expected to act in their own economic interests. Like the real estate agent who acts on
23 behalf of the seller not the buyer, the underwriter's interest is in obtaining the *highest*

1 yield for the bonds and in structuring a transaction for the quickest and easiest sale in the
2 market at the lowest possible risk to their capital. Indeed, they would prefer never to
3 have to actually “underwrite” any portion of the bonds but instead sell all the bonds at the
4 yield that is attractive to their customers not the utility’s consumers.

5 This conflict of interest is well known. Under Dodd-Frank, an underwriter cannot
6 lawfully be both the advisor to a state or local government on the structure, marketing
7 and pricing of government bonds and also serve as the underwriter of those bonds. While
8 underwriters of private bonds are not subject to this prohibition, the inherent conflict is
9 the same.

10 Indeed, underwriters make clear in all written engagement agreements that they
11 have no fiduciary duty to act in the best interests of those responsible for paying back the
12 bonds. Underwriters require the issuer who is responsible for repaying the bonds to
13 explicitly acknowledge and accept what this means. Other state utility commissions have
14 found this single fact of the underwriter’s conflict of interest with ratepayers to warrant a
15 pre-issuance review process. The overwhelming choice of state utility commissions since
16 2005 is for proactive oversight and involvement in structuring, marketing and pricing of
17 ratepayer -backed bonds to protect consumer interests.²⁷

18 The absence of a fiduciary responsibility for underwriters has also led state utility
19 commissions to conclude that the advice they receive should not be from financial advisors
20 who also underwrite the utility’s debt and equity with conflicting loyalties but from those
21 solely with a duty of loyalty and care to the commission and its ratepayers.²⁸

²⁷ See Attachment A, Chart of all investor owned-utility securitization financing orders from 2005 to present.

²⁸ *Ibid.*

1 In this case, it appears that PG&E has selected Citigroup to be a structural advisor
2 for the Securitization.

3 The obligor needs to create a competitive process among underwriters and
4 investors to achieve the greatest leverage in negotiations and therefore the lowest possible
5 cost. But the nominal obligor in the securitization – the SPE owned by the utility – has
6 the unfettered ability to pass all costs directly onto consumers. The real obligor – the
7 consumer – doesn't get a say in that process under the PG&E proposal unless the
8 Commission provides the oversight and involvement in the process like so many other
9 commissions have done to protect the consumer. The traditional regulatory incentives
10 that produce lower costs do not apply to Recovery Bonds.

11 Some underwriters will be more competitive on a specific bond issue if they
12 anticipate economic gain from future transactions or related business if they perform
13 successfully and please the decision-makers. Others may seek to maximize their income
14 solely from the transaction. Still other underwriters may have lower compensation
15 hurdles and be willing to be more aggressive in distribution and pricing. These are
16 elements of the public capital markets. Everyone can be expected to act in their own
17 economic interest. It is important for any issuer to have experience with market
18 participants and negotiate hard to achieve the best deal possible.

19 **Q. Discuss examples of how consumers could save or have saved money as a result of**
20 **state commission adoption of the type of conditions you are recommending.**

21 **A.** That financing terms make a difference is illustrated by the experience of the West
22 Virginia commission. In 2009, underwriters in West Virginia advised the local utility
23 seeking securitization authorization from the state's utility commission that, in the

1 aftermath of the 2008 financial crisis it should enter into securitized bonds with a
2 weighted average life of ten years. But acting on the advice and recommendation of its
3 own independent experts, the state commission approved, as part of a joint stipulation a
4 19-year bond. That bond sold for one of the lowest credit spreads ever for a securitized
5 utility bond of that duration. And it maximized net present value savings to West
6 Virginia consumers was far greater than the ten-year bonds recommended by the
7 underwriter.²⁹

8 The purpose of the conditions I have discussed, as highlighted by West Virginia's
9 experience, is self-evident. Those conditions address both (1) the inherent conflict in
10 having the utility rely on the same entity to advise it on the transaction and to serve as
11 underwriter and (2) the inadequate incentive of the utility – given its insulation from risk
12 – to drive the hardest bargain with the underwriter and maximize present value savings to
13 customers. The conditions I've recommended as best practices tackle those concerns
14 directly.

15 **Q. Are you saying that a securitized bond with a triple A rating would not produce a**
16 **“just and reasonable” result for consumers?**

17 **A.** While it is likely that securitization financing will result in lower rates than would occur
18 from traditional financing, there is no reason for consumers to pay anything more for a
19 bond issue than is necessary. With a statutory requirement to “reduce, to the maximum
20 extent possible, the rates on a present value basis”, the emphasis is on eliminating waste

²⁹ See Public Service Commission of West Virginia, Monongahela Power Company and The Potomac Edison Company, dba Allegheny Power Docket no. 05-0750-E-PC, *Commission Final Order adopting the Third FO Joint Stipulation* (September 30, 2009) available at: <http://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=280001&NofType=%27WebDocket%27>.

1 and inefficiency instead of accepting it because the interest rate and fees are in a range of
2 so-called “reasonableness.” Ratepayer costs are at financial risk throughout the financing
3 process and need specific protections that can best be provided by a financing team, pre-
4 issuance review process.

5 **V. CONCLUSION**

6 In conclusion, PG&E’s proposal to finance \$7.5 billion of 2017 wildfire claims through
7 the issuance of recovery bonds violates the terms of the Commission’s PG&E
8 Reorganization decision that a.) requires PG&E to cover 100% of the approximately \$7.5
9 billion in wildfire liabilities and b.) mandates ratepayer neutrality as a prerequisite for
10 PG&E participation in the AB 1054 wildfire insurance fund. PG&E’s proposal is not
11 ratepayer neutral, is not sufficiently customer protective, and, without adequate
12 independent oversight, will not reduce, to the maximum extent possible, the rates on a
13 present value basis that consumers within the electric corporation's service territory would
14 pay as compared to the use of traditional utility financing mechanisms.

15 Should the Commission ultimately approve a securitized bond for PG&E, I
16 recommend that the Commission make significant modifications and implement “best
17 practices” and procedures summarized in this testimony, including making sure that
18 independent resources are at the table for all negotiations affecting ratepayers in advance
19 of any decisions affecting ratepayers.

20 **Q. Does this conclude your testimony?**

21 **A.** Yes.

- Managed staff of 5 business development analysts
- Raised \$80M internally for Japanese national fiber network expansion plan by conducting an investment evaluation and presenting findings to CEO of international operations in London, UK
- Built financial model for local fiber optic investment evaluation that was used by business development offices in Oak Brook, IL and Sydney, Australia

EDUCATION

Vanderbilt University, Nashville, TN

1994-1996

MBA, Finance

- Completed business plan for Nextlink Communications in support of their national fiber optic network expansion, including identifying opportunities from passage of Telecom Act of 1996
- Developed analytical framework to evaluate predictability of rare events
- Provided financial and accounting analysis to Chicago's consumer advocate, the Citizens Utility Board (CUB) as a summer intern

Clark University, Worcester, MA

1990 - 1994

BA, Mathematics

APPENDIX B. TESTIFYING EXPERIENCE OF AARON L. ROTHSCHILD

Filed Rate of Return Testimonies:

California

- Southern California Edison, Application 20-07-008, Securitization, September 2020
- San Diego Gas & Electric Company, Application 19-04-017, Rate of Return, August 2019
- Southern California Gas Company, Application 19-04-016, Rate of Return, August 2019
- Pacific Gas and Electric Company, Application 19-04-015, Rate of Return, August 2019
- Southern California Edison, Application 19-04-014, Rate of Return, August 2019
- Liberty Utilities, Application A.18-05-006, Rate of Return, August 2018
- San Gabriel Water Company, Application A.18-05-005, Rate of Return, August 2018
- Suburban Water Company, Application A.18-05-004, Rate of Return, August 2018
- Great Oaks Water Company, Application A.18-05-001, Rate of Return, August 2018
- California Water Service Company, Application A.17-04-006, Rate of Return, August 2017
- California American Water Company, Application A.17-04-003, Rate of Return, August 2017
- Golden State Water Company, Application A.17-04-002, Rate of Return, August 2017
- San Jose Water Company, Application A.17-04-001, Rate of Return, August 2017

Colorado

- Public Service Company of Colorado, Docket No. 11AL-947E, Rate of Return, March 2012

Connecticut

- United Water Connecticut, Docket No. 07-05-44, Rate of Return, November 2008
- Valley Water Systems, Docket No. 06-10-07, Rate of Return, May 2007

Delaware

- Tidewater Utilities, Inc., PSC Docket No. 11-397, Rate of Return, April 2012
- Delmarva Power & Light, PSC Docket No. 09-414, Rate of Return, February 2010
- Delmarva Power & Light, PSC Docket No. 09-276T, Rate of Return, February 2010

Florida

- Florida Power & Light (FPL), Docket No. 070001-EI, October 2007
- Florida Power Corp., Docket No. 060001 Fuel Clause, September 2007

New Jersey

- Aqua New Jersey, Inc., BPU Docket No. WR11120859, Rate of Return, April 2012

Maryland

- Delmarva Power & Light, Case No. 9317, Rate of Return, June 2013
- Columbia Gas of Maryland, Case No. 9316, Rate of Return, May 2013
- Potomac Electric Power Company, Case No. 9286, Rate of Return, March 2012
- Delmarva Power & Light, Case No. 9285, Rate of Return, March 2012

North Dakota

- Otter Tail Power Company, Case No. PU-17-398, Rate of Return, May 2018
- Montana-Dakota Utilities Co., Case No. PU-15-90, Rate of Return, August 2015
- Northern States Power, Case No. PU-400-04-578, Rate of Return, March 2005

Pennsylvania

- Pennsylvania American Water Company Docket No. R-2020-3019369 and R-2020-3019371, Rate of Return, September 2020
- Twin Lakes Utilities, Inc., Docket No. R-2019-3010958, Rate of Return, October 2019
- City of Lancaster Sewer Fund, Docket No. R-2019-3010955, Rate of Return, October 2019
- Community Utilities of Pennsylvania Inc. Wastewater Division, Docket No. R-2019-3008948, Rate of Return, July 2019
- Community Utilities of Pennsylvania Inc. Water Division, Docket No. R-2019-3008947, Rate of Return, July 2019
- Newtown Artesian Water Company, Docket No. R-20019-3006904, Rate of Return, May 2019
- Hidden Valley Utility Services, L.P. – Wastewater Division, Docket No. R-2018-3001307, Rate of Return, September 2018
- Hidden Valley Utility Services, L.P. – Water Division, Docket No. R-2018-3001306, Rate of Return, September 2018
- The York Water Company, Docket No. R-2018-3000019, Rate of Return, August 2018
- SUEZ PA Pennsylvania, Inc., Docket No. R-2018-000834, Rate of Return, July 2018
- UGI Utilities, Inc. – Electric Division, Docket No. R-2017-2640058, Rate of Return, April 2018
- Wellsboro Electric Company, Docket No. R-2016-2531551, Rate of Return, December 2016
- Citizens’ Electric Company of Lewisburg, PA, Docket No. R-2016-2531550, Rate of Return, December 2016
- Columbia Gas of Pennsylvania, Inc., Docket No. R-2016-2529660, Rate of Return, June 2016
- Columbia Gas of Pennsylvania, Inc., Docket No. R-2015-2468056, Rate of Return, June 2015
- Pike County Light & Power Company, Docket No. R-2013-2397353 (gas), Rate of Return, April 2014
- Pike County Light & Power Company, Docket No. R-2013-2397237 (electric), Rate of Return, April 2014
- Columbia Water Company, Docket No. R-2013-2360798, Rate of Return, August 2013
- Peoples TWP LLC, Docket No. R-2013-2355886, Rate of Return, July 2013
- City of Dubois – Bureau of Water, Docket No. R-2013-2350509, Rate of Return, July 2013
- City of Lancaster – Sewer Fund, Docket No. R-2012-2310366, Rate of Return, December 2012
- Wellsboro Electric Company, Docket No. R-2010-2172665, Rate of Return, September 2010

- Citizens’ Electric Company of Lewisburg, PA, Docket No. R-2010-2172662, Rate of Return, September 2010
- T.W. Phillips Gas and Oil Company, Docket No. R-2010-2167797, Rate of Return, August 2010
- York Water Company, Docket No. R-2010-2157140, Rate of Return, August 2010
- Joint Application of The Peoples Natural Gas Company, Dominion Resources, Inc. and Peoples Hope Gas Company LLC, Docket No. A-2008-2063737, Financial Analysis, December 2008
- York Water Company, Docket No. R-2008-2023067, Rate of Return, August 2008

South Carolina

- Palmetto Utilities, Inc., Docket No. 2019-281-S, Rate of Return, May 2020
- Palmetto Utilities, Inc., Docket No. 2019-281-S, Accounting, May 2020
- Blue Granite Water Company, Docket No. 2019-290-WS, Rate of Return, January 2020

Vermont

- Central Vermont Public Service Corp., Docket No. 7321, Rate of Return, September 2007

Survey of State Authorizing Legislation and Commission Financing Orders in Investor-Owned Utility Securitization

“Best Practices” for Consumers:

Examples of Post Financing Order Review Process with Commission Participation with Independent Experts

Listed Alphabetically by State

- California 2018-19, Colorado 2019 and Montana 2019 have the strongest legislative standard for utility securitization i.e. maximizing present value savings to consumers. Other statutes are silent or refer to lowest cost or allow commission financing orders to determine decision making standard.
- All commission financing orders below have a post financing order review process with the use of independent experts to the commission. Most financing order require written certification from the utility and the independent expert as to whether the financing standard has been met at time of pricing to be reviewed by commission in an issuance advice letter process.
- Reviewed issuance advice letters available upon request.

State	Is there a “Lowest Cost” Standard to Ratepayers in the Statute?	Is there a” Lowest Cost” Standard in Financing Order?	Is there a post Financing Order review process with explicit authorization of commission advisors/experts to participate in financing process to protect consumers?	Does the commission require a written certification required that financing order standard has been met at time of pricing?	Legislative Link	Financing Order Link
CA - 2004	No. “would reduce the rates on a present value basis that consumers within the recovery corporation’s service territory would pay if the financing order were not adopted...” (NB: no requirement to the maximum extent possible as in AB1054 as per below.)	No. Only indirectly. Financing Order states only: “Decision 03-12-035 contemplated that the Energy Recovery Bonds should have the highest credit rating possible in order to obtain the lowest interest rate possible (and lowest interest costs paid by ratepayers).” “The Financing Entity as defined by Section 848(b) shall select the final number, type, and size of bond classes to achieve the lowest average interest cost. In addition, the revenue requirement for the different classes for each series shall sum to an	Yes (Ordering Para. 33) “Prior to the issuance of each series of Energy Recovery Bonds, the Bonds and the associated Bond transaction shall be reviewed and approved by the Commission’s Financing Team consisting of the Commission’s General Counsel, the Director of the Energy Division, other Commission staff, outside bond counsel, and any other outside experts that the Financing Team deems necessary. The other outside expertise may include, for example, an independent financial advisor to assist the Financing Team in overseeing and revising the issuance of each series of bonds.”	No.	Ca. P.U. Code Div. 1, Ch. 4, Art 5.6 (Senate Bill 772) 2004 bonds to refinance PG&E’s bankruptcy-related regulatory asset.	CPUC D. 04-11-015

Survey of State Authorizing Legislation and Commission Financing Orders in Investor-Owned Utility Securitization

“Best Practices” for Consumers:

Examples of Post Financing Order Review Process with Commission Participation with Independent Experts

		<p>annual amount that closely approximates what the SPE would pay if only one class of Bonds were issued that is amortized on a level, mortgage style basis over the life of the series.”</p> <p>“The Energy Recovery Bonds may have fixed or floating interest rates as determined at the time of issuance to provide the lowest all-in cost of Bonds.”</p> <p>“If appropriate, each series of Energy Recovery Bonds should be divided into several classes with different maturity dates, with the final number, type, and size of Bond classes selected by the SPE to achieve the lowest average interest cost.</p>				
CA -2018-19	Yes, §850.1, subd. (a)(1)(A) “(III) The recovery of recovery costs through the designation of the fixed recovery charges and any associated fixed	Pending	Pending	Pending	<p>Ca. P.U. Code Div. 1, Ch. 4, Art 5.8</p> <p>(California Senate Bill 901 (2018), amended by Assembly Bill 1054 (2019) and</p>	Pending

Survey of State Authorizing Legislation and Commission Financing Orders in Investor-Owned Utility Securitization

“Best Practices” for Consumers:

Examples of Post Financing Order Review Process with Commission Participation with Independent Experts

	<p>recovery tax amounts, and the issuance of recovery bonds in connection with the fixed recovery charges, would reduce, to the maximum extent possible, the rates on a present value basis that consumers within the electrical corporation’s service territory would pay as compared to the use of traditional utility financing mechanisms, which shall be calculated using the electrical corporation’s corporate debt and equity in the ratio approved by the commission at the time of the financing order.”</p>				<p>Assembly Bill 1513 (2019)</p>	
<p>CO -2019</p>	<p>Yes. “The provisions of the financing order will ensure that the proposed structuring, marketing, and pricing of the CO-EI bonds will: (ii) achieve the maximum net present value of customer savings, as determined by the commission in a</p>		<p>Yes. “In performing its responsibilities under this article 4 1, the commission may engage outside consultants and counsel, selected by the commission, who are experienced in securitized electric utility ratepayer-backed bond financing similar to CO-EI bonds. These outside</p>	<p>Yes.</p>	<p>Colorado Revised Statutes, Title 40, Article 41 (CO 2019a 236)</p>	

Survey of State Authorizing Legislation and Commission Financing Orders in Investor-Owned Utility Securitization

“Best Practices” for Consumers:

Examples of Post Financing Order Review Process with Commission Participation with Independent Experts

	financing order, consistent with market conditions at the time of sale and the terms of the financing order. “		consultants and counsel have a duty of loyalty solely to the commission, must not have any financial interest in the CO-EI bonds, and shall not participate in the underwriting or secondary market trading of the CO-EI bonds. The expenses associated with any engagement shall be paid by the applicant utility and shall be included as financing costs and included in the CO-EI charge, are not an obligation of the state, and are assigned solely to the transaction.”			
FL -2006	No	Yes. Finding of Fact 91: “Therefore, we find and direct that the standard for this Order should be that the structuring, marketing, and pricing of storm-recovery bonds will result in the lowest storm-recovery charges that will achieve the lowest cost objective and the greatest possible customer protections.” For example, Ordering Paragraph 55:	Yes. (Financing Order, page 7: “this Commission - as represented at various stages either jointly or separately by. . . the Commission’s financial advisor. . . will participate in advance in all aspects of the structuring, marketing, and pricing of the storm-recovery bonds. . . “To ensure that these standards are met and these procedures are followed, this Commission - as represented at various stages either jointly or separately by a designated Commissioner, designated	Yes.	Florida Statutes §366.8260 (2005 Bonds to finance storm-recovery costs)	Order No. PSC-06-0464-FOF-E1

Survey of State Authorizing Legislation and Commission Financing Orders in Investor-Owned Utility Securitization

“Best Practices” for Consumers:

Examples of Post Financing Order Review Process with Commission Participation with Independent Experts

		ORDERED that the members of the Bond Team shall work cooperatively to achieve the statutory cost objectives and the lowest overall cost standard. Plus Multiple Findings of Fact and Ordering Paragraphs	Commission personnel, the Commission’s financial advisor, and the Commission’s outside legal counsel, as these representatives deem appropriate - will participate in advance in all aspects of the structuring, marketing, and pricing of the storm-recovery bonds.” Multiple Findings of Fact and Ordering Paragraphs			
FL - 2015	No.	Yes. For example, Ordering Paragraph 55 ORDERED that the members of the Bond Team shall work cooperatively to achieve the statutory cost objectives and the lowest overall cost standard.” Plus Multiple Findings of Fact and Ordering Paragraphs following above	Yes. Multiple Findings of Fact and Ordering Paragraphs following above.	Yes.	Florida Statutes § 366.95 (2015 Bonds to finance nuclear asset-recovery costs)	Duke Energy DOCKET NO.150148-EI
LA	No	The required form of Issuance Advice Letter, including Commission Designee’s Concurrence, states: “The structuring and	Yes. (Ordering Paragraph 37: “The Commission will have the sole authority to select and retain its financial advisor . . .”)	Yes.	La.R.S.A. §§45:1251-1261¹	Order Number U-32764-A, Appendix A (Entergy LA and Entergy Gulf States)

Survey of State Authorizing Legislation and Commission Financing Orders in Investor-Owned Utility Securitization

“Best Practices” for Consumers:

Examples of Post Financing Order Review Process with Commission Participation with Independent Experts

		pricing of the System Restoration Bonds resulted in the lowest system restoration charges consistent with market conditions on the date and time of such pricing (see Attachments 4 and 5).”				
LA	No	Yes. The required form of Issuance Advice Letter, including Commission Designee’s Concurrence, states: “The structuring and pricing of the System Restoration Bonds resulted in the lowest system restoration charges consistent with market conditions on the date and time of such pricing (see Attachments 4 and 5).”	Yes. (Ordering Paragraph 39: “The Commission will have the sole authority to select and retain its financial advisor . . .”)	Yes.	<u>La.R.S.A. §§45:1251-1261²</u>	<u>Order No. U-29157 (Cleco Power)</u>
LA	No	Yes. The required form of Issuance Advice Letter, including Commission Designee’s Concurrence, states: “The structuring and pricing of the System	Yes. (Ordering Paragraph 37: “The Commission will have the sole authority to select and retain its financial advisor . . .”)	Yes.	<u>La.R.S.A. §§45:1251-1261³</u>	

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		Restoration Bonds resulted in the lowest system restoration charges consistent with market conditions on the date and time of such pricing (see Attachments 4 and 5).”				
LA	No	Yes. The required form of Issuance Advice Letter, including Commission Designee’s Concurrence, states: “The structuring and pricing of the System Restoration Bonds resulted in the lowest system restoration charges consistent with market conditions on the date and time of such pricing (see Attachments 4 and 5).”	Yes. (Ordering Paragraph 37: “The Commission will have the sole authority to select and retain its financial advisor...”)		<u>La.R.S.A. §§45:1251-1261⁴</u>	Order Number U-30981-B Order Number U-30981-C (Entergy LA and Entergy Gulf States 2010)
LA	No	Yes. The required form of Issuance Advice Letter, including Commission Designee’s Concurrence, states: “The structuring and pricing of the System Restoration Bonds	Yes. (Ordering Paragraph 37: “The Commission will have the sole authority to select and retain its financial advisor....”)	Yes.	<u>La.R.S.A. §§45:1251-1261⁵</u>	Resolution R-15-93 (Entergy New Orleans 2015)

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		resulted in the lowest system restoration charges consistent with market conditions on the date and time of such pricing (see Attachments 4 and 5).”				
MD - 2015	No.	Yes. (See QRO pages 9 and 10: “The Issuance Advice Letter will also contain a representation of the Company that the pricing and structuring of the Rate Stabilization Bonds will result in the lowest Qualified Rate Stabilization Charge consistent with market conditions at the date and time of pricing and the terms of the QRO.”)	Yes. (See QRO page 4: “The Commission also determines that it is in the ratepayers’ interest that Commission staff and its advisor, Public Resources Advisory Group (‘PRAG’), participate in the review and development of all related financing documents and in the structuring, marketing and pricing of the Rate Stabilization Bonds.”)	Yes.	2015 MD Code Div. 1, Title 7, Subtitle 5 (HB 703)	Qualified Rate Order N. 81181
MT - 2019	Yes. “the commission shall perform comprehensive due diligence in its evaluation of an application for a financing order and shall oversee the process used to structure, market, and price Montana energy	Pending	Pending	Pending	2019 HB0467	

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	<p>impact assistance bonds....</p> <p>(d) shall ensure that the structuring, marketing, and pricing of Montana energy impact assistance bonds maximizes net present value customer savings, consistent with market conditions and the terms of the financing order.</p>					
NC -2019	<p>Yes</p> <p>Section 62-172(b)(3)(b)(3): “In a financing order issued to an electric utility, the commission shall include : . . . 3. A finding that the structuring and pricing of the storm recovery bonds are reasonably expected to result in the lowest storm recovery charges consistent with market conditions at the time the storm recovery bonds are priced and the terms set forth in such financing order.”</p> <p>See also</p>	Pending	<p>Yes</p> <p>Section 62-172(n): “In making determinations under this section, the Commission or public staff or both may engage an outside consultant and counsel.”</p> <p>See also Section 62-172(a)(4)f: “Financing costs . . . includes all of the following . . . f. Any costs incurred by the Commission or public staff for any outside consultants or counsel retained in connection with the securitization of storm recovery costs.”</p>	Pending	North Carolina SB59 2019	Pending

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	“... 12. Any other conditions not otherwise inconsistent with this section that the Commission determines are appropriate.”					
NH - 2000	Yes (N.H.R.S., §369-B:5.IX)	Yes (tracking the statutory requirement. Finding 18: “The Commission finds that in order to obtain the highest rating on the RRBs as possible commensurate with achieving the targeted triple-A rating and therefore the lowest cost in the RRBs consistent with market conditions then in existence...”)	Oversight is assigned to the State Treasurer. <i>See</i> page 22: “The State Treasurer, with input and advice from such advisors as she may select, shall oversee the development and determination of the final structure, documentation terms of the RRBs, and shall notify PSNH and the Commission, as provided in this Finance Order, of the results of her oversight and her conclusions with respect thereto.”)	No.	N.H.R.S.A Ch. 369-A and 369-B	2000 Financing Order N.H.P.U.C. Order No. 23,550
NJ - 1999	Yes (N.J.R.S. §48:3-62 14.b.4.)	Yes (tracking the statutory requirement)	Yes (<i>See</i> Financing Order Appendix G.)	Yes.	2013 N.J.R.S. Title 48, Sections 48:3-49 and 48:3-62 through 48:3-766 (Public Law 1999)	1999 Financing Order Issued to PSE&G
NJ - 1997	Yes (N.J.R.S. §48:3-62 14.b.4.)	Yes (tracking the statutory requirement)	Yes (<i>See</i> Financing Order Appendix G.)	Yes.	2013 N.J.R.S. Title 48, Sections 48:3-49 and 48:3-62 through 48:3-767 (Public Law 1999)	1997 Financing Order Issued to Jersey Central Power & Light

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NJ -2006	Yes (N.J.R.S. §48:3-62 14.b.4.)	Yes (tracking the statutory requirement)	Yes (<i>See</i> Financing Order Appendix G.)	Yes.	2013 N.J.R.S. Title 48, Sections 48:3-49 and 48:3-62 through 48:3-768 (Public Law 1999)	2006 Financing Order Issued to Jersey Central Power & Light
NJ -2001	Yes (N.J.R.S. §48:3-62 14.b.4.)	Silent	Silent	Yes.	2013 N.J.R.S. Title 48, Sections 48:3-49 and 48:3-62 through 48:3-769 (Public Law 1999)	2001 Financing Order Issued to Jersey Central Power & Light
NJ -2001	Yes (N.J.R.S. §48:3-62 14.b.4.)	Yes (tracking the statutory requirement)	Yes (<i>See</i> Financing Order Appendix G.)	Yes.	2013 N.J.R.S. Title 48, Sections 48:3-49 and 48:3-62 through 48:3-76¹⁰ (Public Law 1999)	Atlantic City Electric, 2001
NJ - 2005	Yes (N.J.R.S. §48:3-62 14.b.4.)	Yes. See Ordering Paragraph 16: “To ensure that the issuance of the BGS Transition Bonds will produce maximum benefits for Petitioner's customers, including the lowest transition bond charges consistent with market conditions and the terms of this Bondable Stranded Costs Rate Order, the Board has determined that its Financial Advisor, Saber Partners	Yes. (See Ordering Paragraph 17: “The Financial Advisor will: (1) provide advice to the Board and its Staff on the Petitioner's filing; (2) provide financial advice to the Board, the Designee, and Board Staff with respect to the structuring, marketing, and pricing of the BGS Transition Bonds, as authorized by this Order; (3) participate fully and in advance in all aspects of Petitioner's structuring, marketing, and pricing of the BGS Transition Bonds on	Yes.		2005 Financing Order Issued to PSE&G

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		<p>LLC, under the supervision of Board Staff and the Board's Designee, will participate directly and in advance with Petitioner in all discussions and negotiations regarding the structuring, marketing, and pricing of the BGS Transition Bonds.”)</p>	<p>behalf of the Board and its Staff; (4) advise the Board and its Designee via timely certification to be filed on the next business day after the Petitioner's Pricing Advice Certificate is filed, whether or not the Petitioner's proposed structuring, marketing, and pricing of the BGS Transition Bonds will yield the lowest BGS Transition Bond Charges consistent with market conditions existing at the time the BGS Transition Bonds are priced, EDECA, and the terms of this Order; (5) attend Commissioner briefing sessions and other meetings and hearings as deemed necessary by Board Staff; and (6) provide a final report to the Board on the results of the financing process with recommendations to improve future financings.”)</p>			
TX -1999	<p>Yes. Subchapter G “The commission shall ensure that the structuring and pricing of the transition bonds result in the lowest</p>	<p>Yes. (tracking the statutory requirement)</p>	<p>Yes. Multiple Findings of Fact and Ordering Paragraphs</p>	<p>Yes in first 6 transactions from utility, underwriter and advisor. Later transactions utility only.</p>	<p>Tex. Util. Code, Title II, Ch. 39, Subch. G (Acts of 1999.)</p> <p>(Bonds financing stranded cost recovery)</p>	<p>CenterPoint 2001</p> <p>CPL 2002</p> <p>TXU/Oncor 2003</p>

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	transition bond charges consistent with market conditions and the terms of the financing order.”					TXU 2003/2004 CenterPoint 2005 AEP Texas Central 2006
WI - 2004	Yes. (Section 196.027(2)(b).1.b)	Yes	Yes	Yes.	Wis. Statutes §196.027 (2003 Wisconsin Act 152, AB 8430)	N/A
WV -2005-09	No.	Yes "Moreover, in the FO Joint Stipulation the Stipulating Parties have agreed that a standard for the Financing should be that the structuring, marketing and pricing of Environmental Control Bonds will result in the lowest Environmental Control Charges consistent with (i)	Yes. Multiple Findings of Fact and Ordering Paragraphs	Yes.	West Virginia Code Ch. 24, Art. 2, Section 4e (HB 2849, as amended)	Monongahela Power CASE NO. 05-0402-E-CN

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		prevailing market conditions on or about the time of the pricing of the Environmental Control Bonds and (ii) the proposed structure of Environmental Control Bonds approved pursuant to the terms of the Financing Order (the “Lowest Cost Objective”).”				
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¹ <https://legis.la.gov/legis/Law.aspx?d=727716>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727717>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727718>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727719>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727720>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727721>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727722>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727723>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727724>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727725>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727726>

² <https://legis.la.gov/legis/Law.aspx?d=727716>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727717>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727718>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727719>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727720>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727721>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727722>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727723>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727724>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727725>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727726>

³ <https://legis.la.gov/legis/Law.aspx?d=727716>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727717>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727718>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727719>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727720>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727721>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727722>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727723>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727724>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727725>; <https://legis.la.gov/legis/Law.aspx?p=y&d=727726>

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⁵ <https://legis.la.gov/legis/Law.aspx?d=727716>;
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⁶ <https://law.justia.com/codes/new-jersey/2013/title-48/section-48-3-49>; <https://law.justia.com/codes/new-jersey/2013/title-48/section-48-3-62>;
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⁷ <https://law.justia.com/codes/new-jersey/2013/title-48/section-48-3-49>; <https://law.justia.com/codes/new-jersey/2013/title-48/section-48-3-62>;
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⁸ <https://law.justia.com/codes/new-jersey/2013/title-48/section-48-3-49>; <https://law.justia.com/codes/new-jersey/2013/title-48/section-48-3-62>;
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